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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,083	04/08/2004	Mathieu Lion	25402-005	2211
32137 7590 06/22/2007 PATENT DOCKET CLERK COWAN, LIEBOWITZ & LATMAN, P.C. 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036			EXAMINER NGUYEN, TUAN N	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 06/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,083

Applicant(s)

LION ET AL.

Examiner

Tuan N. Nguyen

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
4a) Of the above claim(s) 28 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-27 and 29-44 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 4/5/07 have been fully considered but they are not persuasive. With respect to Applicant's argument regarding claim 1 that Peilet fails to show "the bristles act as a conduit through which material passes to and/or from the reservoir" on lines 1-2 of page 9; that Landen fails to show "bristles of the type which provide a conduit allowing the passage of material therethrough" in the last paragraph linking pages 9-10; and that Wise fails to address "the type of bristles as now provided by Applicants claims" in lines 13-16 of page 10, the Examiner disagrees with the Applicant's assertion because the language of the "bristles of the type which provide a conduit allowing the passage of material therethrough" is not found in amended claim 1. It appears that the Applicant's argument is narrower than what is presented in amended claim 1. The Peilet, Landen, and Wise references do disclose a plurality of bristles and the material from the reservoir is passable through the plurality of bristles.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 8-13, 15, 16, 19-21, 23, 25, 26, 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Peilet.

In regard to claims 1, 19-21, Peilet discloses a brush (Fig. 12) comprising a handle (132) having a flexible reservoir for containing a material; and a plurality of bristles (24), through which the material is passable to and/or from the reservoir. The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over device that disclosed by Peilet which is certainly capable of being used in the claimed manner. In regard to claims 2 and 3, wherein both the handle and bristles are inherently made of a material included in the group consisting of silicone or elastomer (see col. 2, lines 28-25). In regard to claim 4, wherein the handle containing the reservoir is adapted to be held and applied by one hand. In regard to claim 8, the brush further comprises a nozzle (136) coupled to the handle, the nozzle being adapted to be manually disconnected from the handle and including the bristles. In regard to claim 9, wherein the nozzle and handle are adapted to be detachably engaged to one another by use of complementary shaped features. In regard to claims 10-13, the nozzle includes a cross channel (134) through which an item within the reservoir can be dispensed. The bristles extend from an end of the nozzle opposite an end interconnected to the handle, the bristles distributed around an outlet of the cross channel. The bristles are substantially evenly distributed around the cross channel to form at least one ring of bristles around the cross channel. Three concentric rings of bristles are distributed around the cross channel (see Fig. 3). In regard to claims 15

and 16, one of the handle and the nozzle includes at least one annular groove (142 or 144) and the other of the handle and the nozzle includes a ridge adapted to be detachably coupled to the groove (142 or 144). One of the handle and the nozzle including the at least one annular groove includes a tubular portion (138) in which the groove is disposed.

In regard to claim 23, the shape of the Peilet handle is considered as an elongated spindle.

In regard to claim 25, the bristles are made from a thermoplastic material.

In regard to claim 26, the nozzle is made from a thermoplastic material.

In regard to claim 30, the bristles are arranged in rows (see Fig. 3).

In regard to claim 31, the handle is made partially from silicone or elastomer.

3. Claims 1, 8-11, 14, 17, 18 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Landen et al. (hereinafter Landen).

Landen discloses a brush (Fig. 1) comprising a handle (10) having a flexible reservoir via piston (15) for containing a material; and a plurality of bristles (13), through which the material is passable to and/or from the reservoir. The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over device that disclosed by Landen which is certainly capable of being used in the claimed manner. The brush further comprises a nozzle (ferrule 11) coupled to the handle; the nozzle is made from metal and being adapted to be manually disconnected from the handle and including the bristles. The nozzle and handle are adapted to be detachably engaged to

one another by use of complementary shaped features. The nozzle includes a cross channel (24) through which an item within the reservoir can be dispensed. The bristles extend from an end of the nozzle opposite an end interconnected to the handle, the bristles distributed around an outlet of the cross channel. Each of the bristles has a length of between 15 and 40 mm (see col. 3, line 65 et seq.). One of the handle and the nozzle includes three annular grooves centered on a common axis and the other of the handle and the nozzle includes three ridges (the threads 21 of nozzle 11 and the complimentary threads of handle 10), each of the ridges adapted to be detachably coupled to a respective one of the three grooves. The nozzle and the bristles are made from different materials.

4. Claims 1 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Wise.

Wise discloses a brush (Fig. 2) comprising a handle (18) having a flexible reservoir for containing a material; and plurality of bristles (16), through which the material is passable to and/or from the reservoir. The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over device that disclosed by Wise which is certainly capable of being used in the claimed manner. The handle further includes an externally disposed rib, which includes an orifice (75).

5. Claims 1-4, 8-17, 19-23, 25, 26 and 29-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Vayrette.

Vayrette discloses a brush (Fig. 2) having, inherently, a silicone handle having a silicone flexible reservoir (4) for containing a material; and a silicone nozzle (3) coupled to the handle, and adapted to be manually disconnected therefrom, the handle comprising a cross-sectional area expanding toward coupling therewith, the silicone nozzle comprising flexible silicone bristles extending therefrom (see col. 3, line 45 et seq.). The handle is adapted to elastically deform such that the reservoir within the handle returns to a non-compressed shaped upon release of a compressive force on the handle. The handle includes an inner surface defining the reservoir that contains a continuous curvature such that the entire reservoir is directly accessible from an opening to the reservoir. The handle includes an internal reservoir extending from a closed end point to a circular shaped open end. The internal reservoir has an internal concave surface extending from the closed end point to the circular shaped open end and a cross-sectional area of the reservoir increases from the closed end point to the circular shaped open end. The handle has a shape of an elongated spindle. The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over device that disclosed by Vayrette which is certainly capable of being used in the claimed manner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peilet.

Peilet discloses the handle and the reservoir as claimed except for their specific range size as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain a size in the specific range as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

7. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vayrette.

Vayrette discloses the handle and the reservoir as claimed except for their specific range size as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain a size in the specific range as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

8. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vayrette in view of Niedospial, Jr.

Although the of the Vayrette reference does not include a reservoir handle having an externally disposed rib with an orifice, attention is directed to the Niedospial, Jr. reference which discloses a flexible reservoir handle (Figs. 22 and 23) having an externally disposed rib with an orifice (417) for suspending the reservoir. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was

made to employ, on the Vayrette reservoir handle, an externally disposed rib with an orifice as, for example, taught by Niedospial, Jr. in order to suspend the device for sale display or for storage.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bolton et al. a reservoir with a cross section similar to that of the instant invention's reservoir. Lamb discloses a reservoir and nozzle of a synthetic plastic or polymeric material such as a silicone rubber.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tuan Nguyen
Primary Examiner
Art Unit 3751

TN